STATUTORY APPENDIX

I. Acts of Congress

A. District of Columbia Self-Government and Governmental Reorganization Act, 93-198, 87 Stat. 774

1. Section 204(e), now codified in Volume 1, page 185, of the 1981 District of Columbia Code

(e) All functions of the Secretary under chapter 81 of title 5 of the United States Code, with respect to the processing of claims filed by employees of the government of the District for compensation for work injuries, are transferred to and shall be exercised by the Commissioner, effective the day after the day on which the District establishes an independent personnel system or systems.

2. Section 431(a), now codified in Volume 1, page 195, of the 1981 District of Columbia Code

Sec. 431. (a) The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has exclusive jurisdiction pursuant to an Act of Congress. The Court of Appeals has jurisdiction of appeals from the Superior Court and, to the extent provided by law, to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia

courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

3. Section 602, now codified at Section 1-233 of the District of Columbia Code (1981 Ed.)

Sec. 602 (a). The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to—

(1) impose any tax on property of the United States or any of the several States:

(2) lend the public credit for support of any private undertaking;

(3) enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;

(4) enact any act, resolution, or rule with respect to any provision of title 11 of the District of Columbia Code (relating to organization and jurisdiction of the District of Columbia courts);

(5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms "individual" and "resident" to be understood for the purposes of this paragraph as they are defined in section 4 of title I of the District of Columbia Income and Franchise Tax Act of 1947);

(6) enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910 (D.C. Code. sec. 5-405), and in effect on the date of enactment of this Act;

(7) enact any act, resolution, or regulation with respect ot the Commission on Mental Health;

(8) enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States attorney or the United States Marshal for the District of Columbia; or

(9) enact any act, resolution, or rule with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners) during the twenty-four full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office.

(b) Nothing in this Act shall be construed as vesting in the district government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or except as otherwise specifically provided in this Act, over any Federal agency, than was vested in the Commissioner prior to the effective date of title IV of this Act.

(c)(1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921, any act which the Council determines according to section 412(a) should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act, the Chairman of the Council shall transmit to the Speaker of the House of

Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting (and with respect to which the President has not sustained the Mayor's veto), and every act passed by the Council and allowed to become effective by the Mayor without his signature. Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 604, except subsections (d), (e) and (f) of such section, shall apply with respect to any concurrent resolution disproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any Act codified in titles 22, 23 or 24 of the District of Columbia Code, such act shall take effect at the end of the 30-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act. The provisions of section 604, relating to an expedited procedure for consideration of resolutions, shall apply to a simple resolution disapproving such act as specified in this paragraph.

B. Longshoremen and Harbor Workers' Compensation Act, 44 Stat. 1427 (33 U.S.C. §§ 910 *et seq.).*

C. Workmen's Compensation Law of the District of Columbia, Act of May 17, 1928, 45 Stat. 600 (D.C. Code, 1973 § 36-501).

DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION ACT

[*Public*—No. 419—70th *Congress, Passed May* 17, 1928, *As Amended*]

[*S.* 3565]

An Act To provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT MADE APPLICABLE TO DISTRICT OF COLUMBIA

The provisions of the Longshoremen's and Harbor Workers' Compensation Act, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employees or an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person.

SECTION 2. EXCEPTIONS

This Act shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) an employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia; (3) an employee subject to the provisions of the Federal Employees' Compensation Act, as amended (Title 5, U.S.C., 751); and (4) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer; and (5) any secretary, stenographer, or other person performing any services in the office of any Member of Congress or under the direction, employment, or at the request of any Member of Congress, within the scope of the duties performed by secretaries, stenographers, or such employees of Members of Congress.

II. U.S. Code

A. Longshoremen and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*

1. 33 U.S.C. § 918(a)

DEFAULTED PAYMENTS

Section 18.(a) In case of default by the employer in the payment of compensation due under any award of compensation for a period of thirty days after the compensation is due and payable, the person to whom such compensation is payable may, within one year after such default, make application to the deputy commissioner making the compensation order or a supplementary order declaring the amount of the default. After investigation, notice, and

hearing, as provided in section 19, a deputy commissioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award, the deputy commissioner may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the employer has his principal place of business or maintains an office, or for the judicial district in which the injury occurred. In case such principal place of business or office or place where the injury occurred is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the United States District Court for the District of Columbia. Such supplementary order of the deputy commissioner shall be final, and the court shall upon the filing of the copy enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the court.

2. 33 U.S.C. § 919(b)

(b) Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the Secretary, shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered mail.

3. 33 U.S.C. § 921

Sec. 921. (a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b)(1) There is hereby established a Benefits Review Board which shall be composed of three members appointed by the Secretary from among individuals who are especially qualified to serve on such Board. The Secretary shall designate one of the members of the Board to serve as chairman.

(2) For the purpose of carrying out its functions under this Act, two members of the Board shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

(3) The Board shall be authorized to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims of employees under this Act and the extensions thereof. The Board's orders shall be based upon the hearing record. The findings of fact in the decision under review by the Board shall be conclusive if supported by

substantial evidence in the record considered as a whole. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the Board. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier.

(4) The Board may, on its own motion or at the request of the Secretary, remand a case to the hearing examiner for further appropriate action. The consent of the parties in interest shall not be a prerequisite to a remand by the Board.

(c) Any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred, by filing in such court within sixty days following the issuance of such Board order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court, to the Board, and to the other parties, and thereupon the Board shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and shall have the power to give a decree affirming, modifying, or setting aside, in whole or in part, the order of the Board and enforcing same to the extent that such order is affirmed or modified. The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier. The order of the court allowing any stay shall contain a specific finding, based

upon evidence submitted to the court and identified by reference thereto, that irreparable damage would result to the employer, and specifying the nature of the damage.

(d) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order. May apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the United States District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(e) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 18.

4. 33 U.S.C. § 927(b)

> (b) If any person in proceedings before a deputy commissioner *or Board* disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take

the oath as a witness, or after having taken the oath refuses to be examined according to law, the deputy commissioner *or Board* shall certify the facts to the district court having jurisdiction in the place in which he is sitting (or to the United States District Court for the District of Columbia if he is sitting in such District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

III. District of Columbia Code (1981 Ed.)

1. Section 1-233

Previously cited under Section 602 of the District of Columbia Self-Government and Governmental Reorganization Act, 93-198, 87 Stat. 774

2. Section 11-942

(a) The Superior Court may compel the attendance of witnesses by attachment. At the request of any party, subpenas [subpoenas] for attendance at a hearing or trial in the Superior Court shall be issued by the clerk of court. A subpena [subpoena] may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within twenty-five miles of the place of the hearing or trial specified in the subpena [subpoena]. The form, issuance, and manner of service of the

subpena [subpoena] shall be as prescribed by the rule of the court.

(b) A subpena [subpoena] in a criminal case in which a felony is charged may be served at any place within the United States upon order of a judge of the court. (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-942.)

3. Section 11-943

(a) All process other than a subpena [subpoena] may be served at any place within the District of Columbia, and, when authorized by statute or by the Federal Rules of Civil Procedure, at any place without the District of Columbia.

(b) Service upon a third-party defendant, upon a person whose joinder is needed for just adjudication, and upon persons required to respond to any order of commitment for civil contempt may be served at all places outside the District of Columbia that are not more than one hundred miles from the place of hearing or trial specified.

(c) The form, issuance, and manner of service of process shall be prescribed by rule of the court. (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-943.)

4. Section 13-302

Subject to the provisions of law or rules of court for service by other persons, the United States marshal for the District of Columbia or his deputy shall serve the process of the District of Columbia Court of Appeals, and the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1; July 29, 1970, 84

Stat. 552, Pub. L. 91-358, title I, § 142(3); 1973 Ed., § 13-302.)

5. Section 36-303

(a) This chapter shall apply in respect to the injury or death of an employee of an employer, as defined in paragraphs (9) and (10) of § 36-301, irrespective of the place where the injury or death occurs provided that at the time of such injury or death this employment is principally localized in the District of Columbia, with the following exceptions:

(1) No employee shall receive compensation under this chapter and at the same time receive compensation under the workers' compensation law of any other state for the same injury or death;

(2) Casual employees or any employees who are employed wholly without the District of Columbia, except that for all purposes of this chapter, casual, occasional or incidental employments outside of the District by the District employer of an employee or employees regularly employed by the employer within the District of Columbia shall be construed to be employment within the District of Columbia; and

(3) An employee and his employer who are not residents of the District of Columbia and whose contract of hire is entered into in another state shall be exempted from the provisions of this chapter while such employee is temporarily or intermittently within the District of Columbia doing wor. or such nonresident employer, if such employer has furnished workers' compensation insurance coverage under the workers' compensation or similar laws of such other state, so as to cover such employee's employ-

ment while in the District of Columbia. The benefits under this chapter or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in the District of Columbia.

(b) Every employer subject to this chapter shall be liable for compensation for injury or death without regard to locality of injury or to fault as a cause of the injury or death.

(c) In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment.

(d) Liability for compensation shall not apply where injury to the employee was occasioned solely by his intoxication or by his willful intention to injure or kill himself or another. (July 1, 1980, D.C. Law 3-77, § 4, 27 DCR 2503.)

6. Section 36-322

(a) A compensation order shall become effective when filed with the Mayor as provided in § 36-320, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subsection (b) of this section, shall become final at expiration of the 30th day thereafter.

(b)(1) Where a compensation order is not in accordance with this chapter, such order may be suspended or set aside, in whole or in part, upon application of any party for review of the order by the Mayor, or, if the Mayor declines to review the order or does not provide for such

review as authorized in paragraph (2) of this subsection or if a final decision pursuant to such review is not rendered within the time period established in paragraph (2) of this subsection, then by the District of Columbia Court of Appeals in accordance with paragraph (3) of this subsection.

(2) The Mayor is authorized to establish an administrative procedure for review of compensation orders raising a substantial question of law or fact. Application for such review shall be made by any party within 30 days from the date a compensation order is filed as provided in § 36-320. Final decisions issued pursuant to such review shall be rendered within 45 days from the date of the application and shall be based upon the record of the hearing. If a final decision is not rendered within such 45 day period the compensation order shall be considered a final decision for purposes of appeal pursuant to paragraph (3) of this subsection. The findings of fact in the order under review shall be conclusive if supported by substantial evidence in the record, considered as a whole. A case may be remanded for further appropriate action. If any party shall apply to the Mayor for leave to adduce additional evidence and shall show to the satisfaction of the Mayor that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the initial hearing before the Mayor, the Mayor may order such additional evidence to be taken and to be made a part of the record. The Mayor may modify his findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole. The Mayor may modify or set aside his original order by reason of such modified or new findings of fact. The application by a party for leave to adduce additional evidence shall stop the running of the 45 day period in which a decision by the Mayor must be rendered. If the

Mayor remands the case, any party may apply for review within 30 days from the date a new compensation order is filed. A final decision must be rendered within 45 days from the date of the application for review of such new compensation order, and if not rendered within such period, then upon expiration of the 45 days such new compensation order shall be considered a final decision for purposes of paragraph (3) of this subsection. The payment of any amounts required by a compensation order shall not be stayed pending final decision on review unless so ordered on the grounds that irreparable injury would otherwise ensue to the employer.

(3) Pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.), any party in interest who is adversely affected or aggrieved by a final decision rendered after review of a compensation order as provided in paragraph (2) of this subsection, or, if the Mayor has declined to review the order or does not establish a procedure for such review, any party in interest who is adversely affected or aggrieved by a compensation order which has been filed as provided in § 36-320, may petition for review of such decision or order by the District of Columbia Court of Appeals. If any party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Mayor, the Court may order such additional evidence to be taken before the Mayor, and to be made part of the record. The Court may remand the case for appropriate action.

(c) If any employer or his officers or agents fail to comply with a compensation order making an award that has become final, any beneficiary of such award, or the Mayor, may apply for the enforcement of the order to the Superior Court of the District of Columbia for enforcement of such order and upon showing that such employer or his officers or agents have failed to comply therewith, the Court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and § 36-320. (July 1, 1980, D.C. Law 3-77, § 23, 27 DCR 2503.)

7. Section 36-501

Previously cited under Acts of Congress as the Workmen's Compensation Law of the District of Columbia.

IV. Acts of the City Council

A. District of Columbia Workers' Compensation Act of 1979, D.C. Law 3-77.

1. Section 4(a)

previously cited under Section 36-303 of the District of Columbia Code (1981 Ed.)

2. Section 23(b)(3)

previously cited under Section 36-322(b)(3) of the District of Columbia Code (1981 Ed.)

3. Section 23(c)

previously cited under Section 36-322(c) of the District of Columbia Code (1981 Ed.)

V. United States Constitution

1. Article I, Section 8, Clause 17

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;

2. Article VI, Section 2

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

APPENDIX OF OPINIONS BELOW

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

GREATER WASHINGTON CENTRAL LABOR COUNCIL, ET AL., *Plaintiffs,*	:	
v.	:	Civil Action No. 9655-80
DISTRICT OF COLUMBIA, *Defendants.*	:	

Washington, D.C.
Friday, September 26, 1980

The above-entitled action came on for a motions hearing before the Honorable JOHN F. DOYLE, Associate Judge, in Courtroom Number 15, commencing at approximately 2:44 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED

APPEARANCES:

On behalf of the Plaintiffs:

JOSEPH H. KOONZ, JR., Esquire
MARK J. BRICE, Esquire
PATRICK M. REGAN, Esquire
Washington, D.C.

On behalf of the Defendant:

GARY FREEMAN, Esquire
Wasington, D.C.

Darlene M. Leasure
Official Court Reporter Telephone: 727-1769

PROCEEDINGS

[Excerpt]

[4:10 p.m.]

THE COURT: This is a suit by the Greater Washington Central Labor Council, AF of L-CIO, and three individual Plaintiffs against the District of Columbia, a municipal corporation.

The relief requested is a judgment, declaring Act—D.C. Act 3-188, known as the D.C. Workmen's Compensation Act of 1979, null and void and for injunctive relief against its enforcement.

The matter comes before the Court upon the motion of the Plaintiff for summary judgment, and the cross motion of the District of Columbia for summary judgment, or in the alternative, to dismiss.

There is no genuine issue respecting the material facts that a Plaintiff, Greater Washington Central Labor Council, is an organization, comprising over 150 unions representing workers regularly engaged in employment in the District of Columbia, and that it is in addition a District of Columbia employer.

Next, that the Plaintiff, Robert Patterson [sic], Joslyn Williams, and William Saunders are employees regularly engaged in employment in the District of Columbia.

Next, that the District of Columbia is a municipal corporation and is the governing body of the District of Columbia.

And, finally, that the District of Columbia Workmen's Compensation Act of 1979, D. C. Act 3-188, was passed by the Council of the District of Columbia on May the 6th, 1980, and was approved by Mayor Marion S. Barry, Jr., on May 14, 1980, and that thirty legislative days after the Act had been presented to – that the thirty legislative days after the Act had been presented to the Congress expired without Congressional disapproval.

There being no genuine issue of fact, what is presented, are pure questions of law.

The central question of law is, was the Council of the District of Columbia acting within its statutory authority when it enacted the D. C. Workmen's Compensation Act of 1979?

Now, the history of the Workmen's Compensation Act in the District of Columbia may here be briefly summarized.

In 1927 the Congress passed the Federal Longshoremen and Harbor Workers Act, 33 U.S.C. 901, *et sequitur,* and a year later in 1928 made it applicable to certain employments in the District of Columbia, 36 D. C. Code, 501 and the following sections.

The workmen's compensation program of the District of Columbia is administered by the United States Department of Labor, through the Office of Workmen's Compensation Programs, District Office, in Washington, D.C. The Program has some forty-two allocated and budgeted positions. Active cases are estimated at from eight thousand to twelve thousand. Administrative appellate pro-

cedures involve appeals to a Benefits Review Board, 33 U.S.C. 921. Judicial review of an order of this Board is permitted and must be made to the United States Court of Appeals for the District of Columbia Circuit, 33 U.S.C. 921c, and not to the District of Columbia Courts, *Harrington versus Moss,* 407 A.2d 658, 663. Enforcement of orders must be made by application to the United States District Court for the District of Columbia, 33 U.S.C. 921d. The cases and rulings in respect of this Act over the long period of years are myriad.

In 1973 the then Secretary of Labor Brennen suggested to the Honorable Ancher Nelson of the House of Representatives, in response to the Congressmen's request for departmental views on the proposed District self-government and governmental reorganization act, that there be a transfer of administration of the District of Columbia Compensation Act to the District of Columbia government.

In the same letter, the Secretary opposed a provision transferring from him responsibilities for the District of Columbia Employment Services, voluntary apprenticeship in the District, and the processing of claims by the District of Columbia employees.

As the bill was enacted, however, the District of Columbia Self-Government Act took precisely the opposite course. It did transfer the functions respecting the District of Columbia Employment Service, voluntary apprenticeship in the District, and the processing of claims by the District of Columbia employees to the District of Columbia government, in Title 2, Section 204 of the Act, but it did not transfer the workmen's compensation function involving private employment.

The extremely detailed planning used to resolve the difficult problems raised by the transfer of functions, which

were made in this Act, including the steps taken to reserve the rights of the Labor Department employees affected, were described in detail to the Congress in the hearings before the District of Columbia committee of the House and the Senate by Mr. Julian Dugas on June the 26th of 1974.

In May of 1979 the Honorable Marion S. Barry submitted for the consideration 96th Congress, in a letter to the Speaker of the House of Representatives, a draft bill designed to effect the transfer of the private workmen's compensation function.

I am advised by the Corporation Council that this bill was never formally introduced to the Congress.

In February of 1980 the Assistant Secretary of the Department of Labor transmitted to the Corporation Council a memorandum of the Departmental Solicitor giving the opinion that the District of Columbia Self-Government Act did not give the District of Columbia the authority to enact its own workmen's compensation program without Congressional repeal of the District of Columbia Workmen's Compensation Act. That is, of course, 36 D.C. Code 501.

The act of the District of Columbia Council here at issue followed.

In the Act it will be noted that the Council establishes a new workmen's compensation structure and specifically repeals existing Federal legislation. The Act otherwise eliminates the judicial review function now held by the United States Court of Appeals for the District of Columbia Circuit and places this function in the District of Columbia Court of Appeals.

The function of the United States District Court for the

District of Columbia in the enforcement of the workmen's compensation orders is eliminated and this function transferred to the Superior Court of the District of Columbia.

Now, at the outset of analysis, it would be well to clear away any legal underbrush which might obscure the true issues which the Court believes are involved in the case.

First of all, the Court would like to deal with the question of ripeness capably raised by the District of Columbia. The Court, however, does not agree with counsel, certainly, as respects the relief of declaratory judgment because involved in here is the whole structure of employer employee rights in the workmen's compensation field. It does not believe that any requirement of justiciable case or controversy require that employers and employees in this vital field remain silent until the proposed effective date of this new bill. Since their rights are so fundamentally affected, both employers and employees, common prudence would require that they move as rapidly as possible in order to examine and find out and determine the validity of legislation which will govern them in the year 1981.

So accordingly, the Court feels that there is a justiciable case for controversy, that there is a case in which vital equitable interests holds that the parties involved hereto are the proper parties to the action, and that their respective rights are vitally involved.

Secondly, this Court desires to make it clear that it does not take a narrow view of the legislative powers of the District of Columbia Council. The legal nature and character of the District of Columbia government is that of a municipal corporation. Title – Section 717(a) of Title 7 of the Home Rule Act provides as follows. All of the territory constituting the permanent seat of the Government

of the United States shall continue to be designated as the District of Columbia. The District of Columbia shall remain and continue a body corporate, as provided in Section 2 of the revised statutes relating to the District. Said corporation shall continue to be charged with all of the duties, obligations, responsibilities, and liabilities, and to be vested with all of the powers, rights, and privileges and immunities and assets respectively imposed upon and vested in said corporation or the commissioner.

This essentially has been the consistent view which the Congress has taken of the nature of the District of Columbia government since the original legislation chartering it in 1801.

However, it has long been recognized that the Congress of the United States possesses, with respect to the District, all of the powers which a state would possess. Hence, the Congress can and often in the past has delegated to the District's government powers which elsewhere are normally and usually exercised by the state legislatures, rather than by city councils.

The Supreme Court has noted this extensively in the great case, the *District of Columbia against John R. Thompson and Company*, 346 U.S. 100 Pages 104 through 111, and the United States Circuit Court of Appeals has likewise explained this status in *Firemen's Insurance Company of Washington v. Washington,* 157 U.S. App. D.C. 320.

Furthermore, the grant of legislative powers to the District of Columbia Council in the Home Rule Act has been made in broad terms. Section 302 of Title 3 recites as follows. Except as provided in Section 601, 602, and 603 the legislative power of the District shall extend to all rightful subjects of legislation within the District, consis-

tent with the Constitution of the United States and the provisions of this Act, subject to all restrictions and limitations imposed upon the state by the tenth section of the first article of the Constitution of the United States.

This is the same type of language which the Congress has conventionally used to establish its own territorial governments.

Furthermore, the breadth of the grant of power made to the District of Columbia Council may further be gauged by reference to the preamble of the Act.

I am reciting provisions of Title 1, Section 102(a).

Subject to the retention by Congress of the ultimate legislative authority over the Nation's Capitol, granted by Article 1, Section 8 of the Constitution, the intent of Congress is to delegate certain legislative powers of the Goverment of the District of Columbia, authorize the election of certain local officials by registered qualified electors in the District of Columbia, grant to the inhabitants of the District of Columbia powers of local self-government, to modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia, and to the greatest extent possible, consistent with the Constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

In summary on the point, if there were no existing workmen's compensation program Federally authorized to operate and actually operating in the District of Columbia, in other words, a legislative vacuum in the field, this Court could readily conclude that the Council had the power to fill the vacuum by appropriate legislation. However, such is not the case.

Also, the extent of the Council's powers in these provi-

sions may not be resolved by considering Section 302 and the preamble in isolation. The Home Rule Act does not begin and end with these paragraphs. Instead of a simple and all encompassing grant of power, this legislation is a true complex of powers, reserved and powers extended. And to determine what has been done in the present instance, requires a much broader survey of the legislation.

Now, to continue with the analysis.

Upon any initial reading of the bill, it becomes obvious that the Congress could, when it passed the Home Rule Act, have repealed its own legislation, which now governs the District of Columbia workmen's compensation operation in the private sector, and transferred the function, now performed by the United States Department of Labor, and the United States Circuit and District Courts, to the District government – the District of Columbia Court of Appeals and the District of Columbia Superior Court respectively. It is equally obvious that when the Congress passed the Home Rule bill it did not so.

The true issue, therefore, is whether, in the Home Rule Act, the Congress, not having itself effected such a repeal and transfer, nevertheless, empowered the City Council later to do so.

In order to analyze this interesting question, the Court shall follow the principle enunciated by the District of Columbia Court of Appeals in *Georgetown against the Zoning Commission,* 392 A.2d, 1027 at Page 1033. And I quote, "It is a cannon of statutory interpretation that one looks at the particular statutory language within the context of the whole legislative scheme when the legislative intent is to be determined."

The first factor to be noted in this respect is that when the Congress did transfer the active ongoing staffed and

funded functions performed by the Secretary of Labor with respect to public employment services for the District of Columbia, it did so specifically and expressedly, carefully providing for the mechanics of transfers. These matters are carefully detailed in Title 2 of the Act at Sections 204(e) and (f). It further scrupulously provided safeguards for the employment rights of the Federal employees then engaged in the function. I refer in this respect to Title 2, Section 204(g).

Now, these provisions that it made for the transfer of these – of the functions of the Secretary of Labor would, at least, in a prima facie fashion, evince a legislative pattern and purpose to transfer to the District of Columbia existing and operating Federal – and operating functions conducted under Federal statutes by Federal officials, only through the means of specific and express statutory provision, taking care to preserve carefully the transfer of records and accounts, and provide for funding and safeguarding rights of persons employed in the Federal office in this capacity.

To suggest that the Congress intended to treat the workmen's compensation program covering the private sector in a different fashion would be atypical and against the grain of the legislative pattern manifest in the Act. These type of factors are known to the law of statutory interpretation under the Latin maxim *inclusio unius exclusio alterius,* or in the present context, suggesting the inference, if the Congress wished to repeal the Act or authorize its municipal corporation, the District of Columbia, to do so, it would have so stated, when it transferred the other functions of the Secretary of Labor.

Now, this is not conclusive on the point, but it leads us to examine with greater care the language of the Congress, when we proceed to review those sections which specific-

ally restrict the – and prohibit the power to the Congress – to the Council.

In this regard, a number of specific sections have been suggested to the Court. The most important one is as follows. It is Title 2, Section – wait a minute. It is Title – it is Section 602(a) of Title 6 of the Act. Title 6 itself describes the reservation of Congressional authority.

Section 602(a) starts out as follows. The Council shall have no authority to pass any acts contrary to the provisions of this Act, except as specifically provided in this Act, or two, – and I go to number three, enact any act, or enact any act to amend or repeal any act of Congress which concerns the functions or property of the United States, or which is not restricted in its application exclusively in or to the District.

In that particular sentence, the most important words are, to enact any act or repeal any act of Congress which concerns the functions of the United States.

Now, the Corporation Counsel has made in this regard an able argument, and, indeed, he made an able argument throughout his entire case. He suggests, in effect, that there are two to be worn by Federal officials, who are operating in and for the District of Columbia, and those who are operating in a national sense.

The dictionary definition of the word function is to perform, execute, and administer. Black's Law Dictionary arrives at this definition, quoting *McNamera against Powell,* 52 New York Supp. 2d, 515 at Page 551.

In the present instance, it is impossible to conceive this function as anything other than a function of the United States. And is performed by the Secretary of Labor and his employees. Appeals are to the United States Circuit

Court of Appeals for the District of Columbia Circuit. Enforcement is by the United States District Judges for the District of Columbia. So the performance, execution, and administration is by the officials of the United States. They are functions of the United States.

I appreciate the distinction suggested to me by the Corporation Counsel. I specifically reject it.

I proceed further to examine the prohibitions, and at this time, I go to number eight, which says, that the City Council shall have no authority to pass any act; or, two, enact any act or regulation relating to the United States Court for the District of Columbia or any other Court of the United States in the District other than the District Courts or relating to the duties or powers of the United States Attorney, or the United States Marshal for the District of Columbia.

I have made reference previously to the sections of the Code and to the cases in which the appellate jurisdiction or the jurisdiction of judicial review over this function is performed by the United States Court of Appeals for the Circuit and its enforcement function by the United States District Court.

This provision of the Act, accordingly, is likewise offended by the action of the City Council.

The corollary to that is pointed out, of course, is at the jurisdiction of our own District Courts are expanded to handle the functions which the council has prohibited now to the Federal Courts. This likewise, in the opinion of the Court, comes into the prohibition of 602(a)(4) of the Act.

I likewise note that the further provision is offended. That is 602(b), which recites, that nothing in this Act shall be construed as vesting in the District of Columbia govern-

ment any greater authority – and then I will pass over some of the other matters recited there – as over any Federal agency than was vested in the commissioner prior to the effective date of Title 4 of this Act.

I cannot see otherwise, and the fact that the District – that the D. C. Council is eliminating a function performed by the Federal agency, the Department of Labor.

Now, accordingly, looking at the whole matter, appreciating the capable arguments that have been made, the Court finds that the D. C. Workmen's Compensation Act of 1979 is null and void and that it specifically violates the provisions of Title 6 of the Home Rule Act reserving grants of – reserving Congressional authority in the instances involved. The declaratory judgment to that effect will issue.

On the question of injunction, the Court does not depart from its finding on ripeness made at the beginning of the action, but in such matters, there questions – there are questions of ripeness, specifically, which may be addressed to the injunctive phase. What is to be enjoined? Who do I – what is being threatened specifically at this moment?

The Court believes that the proper action to take in this regard is to deny the application for injunctive relief, without prejudice to renew it later, should the same become necessary.

The Court indulges in the presumption that the District of Columbia government will, as it always has, abide by the law expressed.

Would you prepare me, Mr. Koonz, an order formalizing this matter?

Mr. Koonz: We certainly will, Your Honor.

We have prepared, as part of our pleadings, a proposed order.

THE COURT: How does it –

MR. KOONZ: It reads as follows.

Upon consideration of Plaintiffs' motion for summary judgment and the opposition thereto, it is this 26th day of September, 1980, ordered that Plaintiffs motion for summary judgment be and hereby is granted.

It is further ordered that the summary judgment declaring the Workmen's Compensation Act of 1979 is hereby null and void, and the order is hereby entered.

THE COURT: Have you got it there?

MR. KOONZ: It is part of your –

THE COURT: Let me see it.

MR. KOONZ: It is in your file Your Honor. It was attached to our original motion.

THE COURT: What is the date?

MR. KOONZ: The 26th of September, Your Honor.

[A pause.]

THE COURT: Gentlemen, I signed it. And I have no doubt but that a question of this great importance will go through the Court of Appeals. It is my opinion that the function of the Trial Court is certainly consistent with appropriate care to decide these matters as rapidly as possible, so it can be addressed effectively to the appellate Court.

MR. KOONZ: Will you allow me a moment?

I have been practicing at the bench for well over twenty years. I would like to thank the Court for its approach, its thoroughness, its obvious dedication to a matter that is of very serious and far-reaching interest to the community.

I am sure counsel would join me in thanking you for staying with this hot issue and spending the time that I know you have, and for giving us the opinion that obviously was –

THE COURT: Thank you.

Mr. Freeman may disagree with you sharply.

MR. FREEMAN: Well, I may disagree, Your Honor, as to the opinion, but certainly not as to the other sentiments.

THE COURT: Thank you all. It is a very interesting argument, capably briefed and capably argued.

MR. KOONZ: Thank you, Your Honor.

MR. FREEMAN: Thank you, Your Honor.

[Thereupon, the case was concluded at approximately 4:42 p.m.]

CERTIFICATE OF REPORTER

I, Darlene M. Leisure, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced, upon the motions hearing in the case of GREATER WASHINGTON CENTRAL LABOR COUNCIL, ET AL. v. DISTRICT OF COLUMBIA,

Civil Action No. 9655-80, in said Court, on the 26th day of September, 1980.

I further certify that the foregoing pages constitutes an excerpt of the official transcript of constitutes an excerpt of the official transcript of said proceedings, as taken from my machine shorthand notes.

In witness whereof, I have hereto subscribed my name, this the 30th day of September, 1980.

/s/ _____

FILED Jan 28, 1982

DISTRICT OF COLUMBIA COURT OF APPEALS

NO. 80-1311

DISTRICT OF COLUMBIA,

Appellant,

v.

THE GREATER WASHINGTON CENTRAL LABOR COUNCIL, AFL-CIO,

Appellee,

FOOD AND ALLIED SERVICE TRADES COUNCIL OF METROPOLITAN WASHINGTON,

Intervenor.

No. 80-1312

THE GREATER WASHINGTON BOARD OF TRADE

Appellant,

v.

DISTRICT OF COLUMBIA, *et al.*,

Appellees.

APPEALS FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

(Hon. John F. Doyle, Trial Judge)

(Argued April 24, 1981 Decided January 28, 1982)

Charles L. Reischel, Deputy Corporation Counsel, with whom *Judith W. Rogers,* Corporation Counsel, was on the briefs, for appellant in No. 80-1311 and appellees in No. 80-1312.

Joseph E. Koonz, Jr., with whom *Mark J. Brice* and *Patrick M. Regan,* were on the brief, for appellee in No. 80-1311.

Mark L. Schaffe, with whom *James A. Mannino* and *James F. Green* were on the brief, for intervenor.

John R. Risher, Jr., with whom *Stanley J. Brown* and *Judith A. Malone* were on the briefs, for amicus curiae in No. 80-1311 and appellant in No. 80-1312.

Thomas D. Wilcox was on the brief for the Alliance of American Insurers, American Insurance Association, and National Association of Independent Insurers, as amici curiae.

Before HARRIS and PRYOR, *Associate Judges,* and GALLAGHER, *Associate Judge, Retired.*

PRYOR, *Associate Judge:* This case presents the issue of whether the District of Columbia Council exceeded its legislative authority under the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code 1981, §§ 1-201 *et seq.,* (Self-Government Act), when it enacted the District of Columbia Workers' Compensation Act of 1979, D.C. Law 3-77, 27 D.C. Reg. 2503 (1980) (codified at D.C. Code 1981, §§ 36-301 *et seq.*), and repealed the existing workmen's compensation legislation applicable to the private sector in the District of Columbia. The trial court concluded that it did. In addition, we are asked to decide whether the trial court abused its discretion in denying the Greater Washington Board of Trade's motion for leave to intervene in the action below. We conclude that the trial court erred in ruling that the Council exceeded its authority in enacting the Worker's Compensation Act, and that the trial court did not abuse its discretion in denying Greater Washington Board of Trade's motion to intervene. Accordingly, we reverse in part and affirm in part.

I.

An understanding of several pertinent statutes is necessary to our analysis of the Council's enactment of the Workers' Compensation Act. Before reaching the issue of whether the Council exceeded its legislative authority in passing the Workers' Compensation Act, we review the history of workmen's compensation in the District of Columbia, the Self-Government Act, and the new District of Columbia Workers' Compensation Act.

A. The Longshoremen's and Harbor Workers' Compensation Act.

Since 1928, workmen's compensation for the District of Columbia has been governed by the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§901 *et seq.* (1976) (Longshoremen's Act). In 1927, in response to the continuing concern about compensation for maritime workers injured on navigable waters, Congress enacted the Longshoremen's Act, "a modern and reasonable workmen's compensation law for certain local maritime workers who are injured while loading or unloading or repairing vessels at the dock – provided their injury occurs while on board the vessel." S. REP. NO. 852, 70th Cong., 1st Sess. 1 (1928).

The Longshoremen's Act vests the responsibility for the administration of the workmen's compensation program in the United States Secretary of Labor. 33 U.S.C. § 939 (1976). The administrative procedure provided by the Act consists of a three-tier system. At the first stage, a deputy commissioner issues a recommendation as to whether the workmen's compensation claim should be paid. *Id.*, § 919(a)-(c). At this point, either party may request a formal hearing before a Department of Labor administrative

law judge. *Id.*, § 919(d) (Supp. III 1979). Review of the administrative law judge's formal order is provided by the Benefits Review Board. *Id.*, § 921(b) (1976, Supp. III 1979). Persons adversely affected by the final order of the Benefits Review Board may appeal to the United States Court of Appeals for the circuit in which the injury occured. *Id.*, § 921(c) (1976). In the event that an employer fails to comply with a compensation award, the beneficiary of the award or the deputy commissioner making the order may seek enforcement in the Federal district court for the judicial district in which the injure occurred. *Id.*, § 921(d) (1976).

Although public employees of the District of Columbia government were protcted by a federal workmen's compensation program at the time of the passage of the Longshoremen's Act, *see* 5 U.S.C. § 8139 (1976), no similar program existed for their counterparts in the local private sector. Between 1921 and 1926, several bills creating workmen's compensation programs for private employees in the District of Columbia were introduced in Congress. However, "disagreements over the system of insurance and the plan of administration led to a legislative deadlock." S. REP. NO. 852, 70th Cong., 1st Sess. 1 (1928). Recognizing that the Longshoremen's Act provided a solution to its inability to agree on a program to cover private employees in the District of Columbia, *see generally id.*, at 2; H.R. REP. NO. 859, 69th Cong., 1st Sess. 1 (1926), Congress passed a workmen's compensation law for the District of Columbia, Act of May 17, 1928, ch. 612, § 1-3, 45 Stat. 600 (1928) (Workmen's Compensation ACt of 1928) (codified at D.C. Code 1973, §§ 36-501, -502), which extended the provisions of the federal statute to cover the private employment sector. Section 36-501 provided in pertinent part:

> The provisions of chapter 18 of title 33, U.S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs. . . .

This section incorporated both the substantive and procedural provisions of the Longshoremen's Act. *Director, Office of Workers' Compensation Programs v. National Van Lines, Inc.*, 198 U.S.App.D.C. 239, 246, 613 F.2d 972, 979 (1979), *cert. denied*, 448 U.S. 907 (1980).

B. The Self-Government Act

The United States Constitution vests Congress with the exclusive legislative authority for the District of Columbia. U.S. CONST. art. I, § 8, cl. 17. In 1973, Congress passed the Self-Government Act to "relieve Congress of the burden of legislating upon essentially local District matters." D.C. Code 1981, § 1-201(a). Subject to its retention of the ultimate legislative authority over the District of Columbia, Congress delegated certain specific legislative powers to the District of Columbia government. *Id.* These legislative powers "extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of [the] Act . . . ." *Id.*, § 1-204. Congress expressly reserved its right

> to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by [the] Act, including legislation to amend or repeal any law in force in the District

> prior to or after enactment of [the] Act and any act passed by the Council. [*Id.*, § 1-206.]

In addition, Congress placed several explicit limitations on the Council's legislative authority. The specific limitations which are pertinent to the issue before us are enumerated in § 1-233:

> (a) The Council shall have no authority to pass any act contrary to the provision of this Act except as specifically provided in this Act, or to—
>
> * * * *
>
> (3) [e]nact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;
>
> (4) [e]nact any act, resolution, or rule with respect to any provision of Title 11 [of the District of Columbia Code] (relating to organization and jurisdiction of the District of Columbia courts);
>
> * * * *
>
> (8) [e]nact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States Attorney or the United States Marshall for the District of Columbia[.]
>
> (b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological park, the National Guard of the District of Columbia, the

Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any federal agency, than was vested in the Commissioner prior to January 2, 1975.

C. Workers' Compensation Act of 1979

On May 6, 1980, the District of Columbia Council passed the Workers' Compensation Act of 1979. Following the approval of Mayor Marion S. Barry, Jr., this legislation was forwarded to Congress on May 15, 1980, for the 30-day review period required by D.C. Code 1981, ⅜ 1-233(c)(1). On July 1, 1980, in the absence of congressional disapproval, the Workers' Compensation Act officially became law. *See* 27 D.C. Reg. 2974 (1980). Pursuant to § 47 of the Act, it was scheduled to take effect on October 1, 1981.

The Workers' Compensation Act provides an administrative scheme for compensation claims in the private sector of employment. See generally 27 D.C. Reg. 2503 (1980). It provides compensation for work-related injuries or death to employees of private businesses principally localized in the District of Columbia. D.C. Code 1981, § 36-303. Any party in interest adversely affected by a compensation award entered by the Mayor may petition for review to the District of Columbia Court of Appeals. *Id.*, § 36-322(b)(3). If an employer fails to comply with a compensation order, the beneficiary of the award or the Mayor may seek its enforcement in the Superior Court of the District of Columbia. *Id.*, § 36-322(c). Section 46 of the Act repeals the existing workmen's compensation law, enacted by Congress in 1928 to cover private employees in the District of Columbia.

II

On July 15, 1980, the Greater Washington Central Labor Council, AFL-CIO, an organization comprised of over 150 unions representing workers regularly employed in the Washington metropolitan area, and three employees from the private sector, brought suit against the District of Columbia government seeking a declaratory judgment as to the validity of the Workers' Compensation Act and injunctive relief against its enforcement. Both parties filed motions for summary judgment. On September 26, 1980, the trial court ruled that the Workers' Compensation Act was null and void as violative of §§ 1-233(a) and (b) of the Self-Government Act. The court, however, denied without prejudice the application for injunctive relief.

First, the trial court noted that in the absence of an existing federal workmen's compensation law, it well might have "conclude[d] that the Council had the power to fill the vacuum by appropriate legislation." In light of Congress' failure to repeal the existing legislation, however, the trial court held that Congress had not empowered the Council to effect such a repeal and a transfer of powers. The court noted that, under the Self-Government Act, Congress expressly provided for the transfer of public employment services from the United States Department of Labor to the District of Columbia government, carefully detailing the mechanics of transfer and scrupulously safeguarding the employment rights of federal employees then engaged in that function. The trial judge concluded that Congress' express transfer of workers' compensation for government employees to the District of Columbia, coupled with its failure to effect a similar transfer of workmen's compensation for private employees, created an inference that Congress did not wish to repeal the federal legislation relating to private workmen's compensation.

Furthermore, the court found that the new law violated several of the explicit limitations on the District's legislative authority embodied in §§ 1-233(a) and (b) of the Self-Government Act. The court ruled that the City Council violated § 1-233(a)(3) (prohibiting the local legislature from amending or repealing any act of Congress concerning the functions or property of the United States), § 1-233(a) (4) (prohibiting the Council from enacting any act, resolution or rule affecting the organization or jurisdiction of the local District of Columbia courts), § 1-233(a) (8) (prohibiting any act or regulation relating to the United States federal courts in the District) and § 1-233(b) (limiting the authority of the District government over any federal agency to that vested in the Commissioner prior to January 2, 1975).

III

Appellants contend that the trial court erred in declaring the Workers' Compensation Act null and void. We agree that the Council acted within its delegated authority whe it enacted the Workers' Compensation Act.

A. Statutory Interpretation

The trial court acknowledge that as part of the Self Government Act, Congress transferred certain functions of the Secretary of Labor with respect to public employment services for the District of Columbia to the local government. The court reasoned that since Congress expressly provided for the transfer of those services, but did not provide for the transfer of the Department of Labor's administration of private workmen's compensation claims, its intention was to preclude the Council from interfering with the latter.

The express transfer by Congress of certain public employment services from the United States Department of Labor to the District government, in the absence of a concurrent transfer of private employment workmen's compensation, however, does not reflect a congressional intent to prohibit the local government from legislating with respect to private workmen's compensation. Rather, the transfer of the public workmen's compensation program to the District of Columbia required express congressional legislation since it was entrusted to the Department of Labor by a federal statute that is not applicable exclusively to the District of Columbia. *See* 5 U.S.C. §§ 8101 *et seq.* (1976); D.C. Code 1981, § 1-233(a) (3). On the other hand, the existing workmen's compensation program for private employees, the Workmen's Compensation Act of 1928, is a congressionally enacted local statute that deals exclusively with District of Columbia matters. Consequently, no express congressional legislation is required to effect the transfer. *See* Part B, *infra*.

Nothing is the language or the legislative history of the Self-Government Act indicates Congress' intent to prohibit the DIstrict form enacting legislation concerning workmen's compensation for the private sector. The absence of an express transfer of private workmen's compensation to the District of Columbia government indicates that Congress chose not to transfer the administration of private workmen's compensation at that time. It does not indicate an intention to preclude local legislation pertaining to workmen's compensation for private employees at a later time under the legislative authority granted to the District of Columbia pursuant to D.C. Code 1981, § 1-204.

B. Review of §1-233(a) (3)

The trial court ruled that the Workers' Compensation Act violated § 1-233(a) (3) of the Self-Government Act, which prohibits the Council from "enact[ing] any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District." The court reasoned that since the United States Department of Labor has been responsible for administering the local workmen's compensation program, and the federal courts are charged with enforcing and reviewing workmen's compensation claims, the repeal of D.C. Code 1973, § 36-501, affected a function of the United States.

Although the Self-Government Act does not define the term "functions of the United States" as used in § 1-233(a) (3), it reasonably may be surmised from the language "which is not restricted in its application exclusively in or to the District . . ." that Congress intended in § 1-233(a) (3) to withhold from local officials the authority to affect or to control decisions made by federal officials in administering federal laws that are national in scope as opposed to laws that relate solely to the District of Columbia. We are not persuaded that Congress intended that performance of a local function by federal officials prior to the Self-Government Act would transform the function into a "function of the United States" for purposes of § 1-233 (a) (3).

The legislative history further suggests that the language was inserted to safeguard the operations of the federal government on the national level:

> The functions reserved to the federal level would be those related to federal operations in the District and to property held and used by the

> Federal Government for conduct of its administrative, judicial, and legislative operations; and for the monuments pertaining to the nation's past. The functions would include physical planning of these federal areas, construction and maintenance of federal buildings, and administration of federal park areas . . . . [HOUSE COMM. ON THE DISTRICT OF COLUMBIA, 93d CONG., 2d SESS., D.C. EXECUTIVE BRANCH PROPOSAL FOR HOME RULE ORGANIC ACT 182 (Comm. Print 1973).[1]

Thus, what Congress sought to protect by inserting this limitation was the integrity of the federal domain as it relates to administration of federal legislation having national impllications.

The Workmen's Compensation Act of 1928 is a local law enacted by Congress which was restricted in its application "exclusively in or to the District," rather than a federal law which is national in scope. When Congress extended the coverage of the Longshoremen's Act to include

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[1] *See also D.C. Government Organization: Hearings on Self-Determination for the District of Columbia,* Part 2, 93d Cong., 1st Sess. 52 (1973) (statement of John Nevius, former Chairman of the District of Columbia City Council):

> For the purposes of identifying these Federal functions, we are speaking basically of three things: First, the function regarding Federal buildings and properties; second, the conduct of Federal business – and there you get into the whole complicated matter of Federal functions versus local functions or Federal interests versus local interests, admittedly not easy to distinguish – and third, the function of international relations and matters concerning the diplomatic corps.

private employees in the District of Columbia, it did not establish a local administrative authority. Rather, for purposes of convenience, the Secretary of Labor was given the authority to adminsiter the District of Columbia compensation program. *See* 33 U.S.C. § 939(b) (1976); S. REP. NO. 852, 70th Cong., 1st Sess. 2 (1928). Despite the Secretary of Labor's participation in the administration of D.C. Code 1973, § 36-501, the Act always has been regarded by the courts as a "local act" and construed as a state law. *See generally Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 266 (1980) (plurality opinion); *Cardillo v. Liberty Mutual Insurance Co.*, 330 U.S. 469, 476 (1947); *Director, Office of Workers' Compensation Programs v. National Van Lines, Inc., supra,* 198 U.S.App.D.C. at 245 n.20, 613 F.2d at 978 n.20. In distinguishing the Longshoremen's Act from the local workmen's compensation program which it encompasses, the United States Court of Appeals for the District of Columbia Circuit stated in *Gudmundson v. Cardillo,* 75 U.S.App.D.C. 230, 234, 126 F.2d 521, 525 (1942):

> The case we have does not arise under the Longshoremen's Act, though doubtless it might if the injury had occurred on a vessel in the Potomac River, tied to a Washington dock, True enough, the language and provisions of the national Act are made applicable to the District, but the two Acts are wholly separate and distinct, for the reason that in the one Congress was exercising the judicial powers conferred under Art. III, whereas in the other – the local act – Congress was exercising the powers granted in Sec. 8 of Art.I, and these powers, . . . include . . . the powers of the State[,] . . . a delegation which . . . embraces full and unlimited jurisdiction . . . to provide for the general welfare of citizens within the District of Columbia . . . .

Moreover, it should be noted that no federal funds are involved in the Department of Labor's administration of § 36-501. Rather, the administrative cost is paid with District of Columbia funds. *See* D.C. Code 1978 Supp., § 36-503 ("There are authorized to be appropriated such sums as may be necessary to pay the expenses incurred by the United States Department of Labor in the administration of this chapter.")

Thus, the Secretary of Labor administers two separate workmen's compensation programs. The first of these, created by the Longshoremen's Act, is a national program passed by Congress in discharge of its Article I powers; the second, the Workmen's Compensation Act of 1928 was enacted as a local law pursuant to the plenary authority of Congress over the District of Columbia. U.S. CONST. art I, § 8, cl. 17; *Gudmundson v. Cardillo, supra,* 75 U.S.App.D.C. at 234, 126 F.2d at 525.[2] Therefore, we find that the function performed by the Secretary of Labor inthe administration of § 36-501 is a purely local one. Consequently, we conclude that the trial court erred in ruling that § 1-233(a)(3) was violated by the enactment of the District of Columbia Workers' Compensation Act of 1979.

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[2]The repeal of D.C. Code 1973, §§ 36-501, -502 and *id.*, 1978 Supp., § 36-503, by the Council has no impact on the functions of the United States Department of Labor in the administration of the Longshoremen's Act as it relates to the maritime industry nationally. The Council neither amended nor repealed any provision of that Act.

C. Review of § 1-233(a) (4)

The trial court also held that the Council increased the jurisdiction of the District of Columbia courts in violation of § 1-233(a)(4) of the Self-Government Act by vesting the Superior Court with the right to enforce compensation awards and this court with the authority to review final compensation orders. *See* D.C. Code 1981, §§ 36-322 (b)(3), (c). Section 1-233(a) (4) of the Self-Government Act states that "[t]he Council shall have no authority to . . . [e]nact any act . . . with respect to any provision of Title 11 [of the District of Columbia Code] (relating to organization and jurisdiction of District of Columbia courts) . . . ." We find that the local legislature did not affect impermissibly the jurisdiction of the local courts by enacting the Workers' Compensation Act.

Section 36-322(c) of the Workers' Compensation Act gives the Superior Court authority to use its equitable powers to enforce compensation awards. Under D.C. Code 1981, § 11-921(a), "the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia." *See Andrade v. Jackson*, D.C.App., 401 A.2d 90, 992 (1979). Within the general equitable powers of the court is the authority to enforce orders of the Mayor and of administrative agencies. Thus, the enforcement of a compensation order of the Mayor or the administrative agency delegated the authority to issue such an order would fall within the equitable jurisdiction presently vested in the Superior Court.

Similarly, the jurisdiction of this court would not be expanded impermissibly by § 36-322(b)(3) of the Act. That section provides for judicial review of compensation orders pursuant to the District of Columbia Ad-

ministrative Procedure Act (DCAPA), D.C. Code 1981, §§ 1-1501 to -1529. As stated in D.C. Code 1981, § 11-722, "[t]he District of Columbia Court of Appeals has jurisdiction . . . to review orders and decisions . . . in accordance with the District of Columbia Administrative Procedure Act . . . ." In *Capitol Hill Restoration Society, Inc. v. Moore,* D.C. App., 410 A.2d 184, 186 (1979), we acknowledged that our jurisdiction to review administrative actions under the Administrative Procedure Act must arise in the form of a "contested case" as defined in the DCAPA.[3] "Under our decisions, in order for a matter to be a contested case, it must involve a trial-type hearing which is required either by statute or by constitutional right." *Capitl Hill Restoration Society, Inc., supra,* 410 A.2d at 187. Review by this court of final decisions relating to compensation orders rendered by the Mayor would arise under the contested case provision of the DCAPA because § 36-322(b) of the Workers' Compensation Act provides that the Mayor shall order that a "hearing" be conducted upon application of any party. Accordingly, this court will review compensation claims by virtue of its preexisting jurisdiction to review administrative proceedings. Therefore, the Workers' Compensation Act does not violate § 1-233(a)(4) of the Self-Government Act.

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[3]D.C. Code 1981, § 1-1502(8), provides in pertinent part:

> The term "contested case" means a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law . . . or by constitutional right, to be determined after a hearing before the Mayor or before an agency . . . .

D. Review of § 1-233(a)(8)

The trial court also found that § 1-233(a)(8) of the Self-Government Act was violated by enactment of the Workers' Compensation Act since under the Longshoremen's Act the United States district courts have authority to enforce compensation awards and the United States courts of appeals have the authority to review final compensation orders. *See* 33 U.S.C. §§ 921(c). (d) (1976). Section 1-233(a)(8) prohibits the Council from passing any legislation relating to the local federal district court or any other court of the United States in the District of Columbia. We conclude that the trial court erred in ruling that the jurisdiction of the federal courts impermissibly was affected by the Workers' Compensation Act.

In 1970, Congress enacted the District of Columbia Court Reform and Criminal Procedure Act, D,C. Code 1981 §§ 11-101 *et seq.* (Court Reform Act), to establish a dual court system in this jurisdiction similar to the state court system in this jurisdiction similar to the state court systems. *Thompson v. United States,* 179 U.S. App. D.C. 76, 79 n. 14, 548 F.2d 1031, 1034 n. 14 (1976). It was Congress' intention to alleviate the Article III courts' burden of adjudicating local matters and thus to permit those courts to devote their attention to matters having national implications. *Palmore v. United States,* 411 U.S. 389, 408-09 (1973). The Court Reform Act established the District of Columbia Court of Appeals and the Superior Court of the District of Columbia and vested these courts with the authority to decide legal issues which solely affect the District of Columbia. *See, e.g., Andrade v. Jackson, supra,* 401 A.2d at 992 ("in establishing [a] unified local court system, Congress divested the federal courts of jurisdiction over local matters, restricting those courts to those matters generally viewed as federal business, . . .

and conferred upon the Superior Court the jurisdictional power to adjudicate local civil actions.") (footnote omitted); *Reichman v. Franklin Simon Corp.*, D.C. App., 392 A.2d 9, 12-13 (1978) ("D.C. Code 1973, § 11-921 gives the Superior Court plenary jurisdiction over civil matters brought in the District of Columbia, and correspondingly limits the civil jurisdiction of the District Court to those special matters of which District Courts nationwide may take cognizance.") (footnote omitted). By repealing the Workmen's Compensation Act of 1928, the Council has not decreased the jurisdiction of the United States courts in the District of Columbia. Workmen's compensation for the private employment sector in the District of Columbia is a "local matter" over which the Council has authority to legislate and the local courts have jurisdiction to adjudicate. The Council's action merely repealed the congressional incorporation of a national law into local statutes. The United States courts retain their jurisdiction to hear claims arising under the Longshoremen's Act. Thus, by enacting the Workers' Compenstion Act, the local legislature did not redefine the authority of the federal courts to rule on workmen's compensation claims under the Longshoremen's Act in violation of § 1-233(a)(8).

E. Review of § 1-233(b)

As another basis for striking down the workmen's compensation legislation enacted by the Council, the trial court ruled that § 1-233(b) of the Self-Government Act was violated when the Council eliminated a function performed by the Department of Labor under the Longshoremen's Act. Section 1-233(b) states in part: "Nothing in this Act shall be construed as vesting in the District government any greater authority over . . . any

federal agency, than was vested in the Commissioner prior to January 2, 1975." In enacting this provision, Congress sought to protect the federal interest by "prohibit[ing] the Council from exceeding its present authority over . . . any other Federal agency." (HOUSE COMM. ON THE DISTRICT OF COLUMBIA, 93d CONG., 2d SESS., TITLE VI-RESERVATION OF CONGRESSIONAL AUTHORITY 1477 (Comm. Print 1973). We fail to see, however, how the Council's action in enacting local workmen's compensation legislation offends that provision of the Self-Government Act.

Enactment of the Workers' Compensation Act neither increases nor decreases the District's authority over the Department of Labor. The sole effect this legislation has on the Department of Labor is that one category of cases presently handled by that agency – namely, private sector workmen's compensation claims arising in the District of Columbia – no longer will be administered by the Secretary of Labor. However, in light of the congressional mandate to vest the local government with authority to legislate on local matters, the ability of the Council to enact local legislation which decreases the workload of federal agencies presently charged with local responsibilities does not constitute a proscribed exercise of authority over such agencies within the meaning of § 1-233(b).

IV

The Greater Washington Board of Trade, an incorporated trade association representing 1,400 retail and commercial firms doing business in the District of Columbia, also appeals the trial court's denial of its application

to intervene. The Board sought intervention as of right[4] or in the alternative, permissive intervention.[5] Although the court rendered its decision on the validity of the Workers' Compensation Act on September 26, 1980, the Board of Trade did not seek to intervene until a week after the court's ruling. Despite this delay, the court did not base its decision on the timeliness factor. *See Vale Properties, Ltd. v. Canterbury Tales, Inc.*, D.C. App., 431 A.2d 11, 15 (1981). Rather, as to Super. Ct. Civ. R. 24(a) (intervention of right), denial was premised upon the court's finding that appellant's interest was adequately represented by the District of Columbia. It stated:

> A careful review of the position taken by the intervenors does not reveal any conflict of interest or any essential difference in their position from that taken by the District of Columbia. What distinctions do exist involve primarily rhetorical

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[4]Super. Ct. Civ. R. 24(a) states in part:

> Upon timely application anyone shall be permitted to intervene in an action: * * * (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

See Vale Properties, Ltd. v. Canterbury Tales, Inc., D.C. App., 431 A.2d 11, 14-15 (1981; *Calvin-Humphrey v. District of Columbia*, D.C. App., 340 A.2d 795, 798 (1975).

[5]Super. Ct. Civ. R. 24(b) provides in pertinent part:

> Upon timely application anyone may be permitted to intervene in an action: * * * (2) when an applicant's claim or defense and the main action have a question of law or fact in common . . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

> differences, shifts in emphasis or variations in the choice of supporting authorities. Nothing in the moving papers submitted by the Intervenors convinces the Court that it should act otherwise than it has already done, or that it should alter or amend the position already taken in this cause. * * * The fact that the Court ultimately disagrees with the Defendant's [the District of Columbia's] position in no way diminishes the Court's respect for that position, nor the Court's conviction that the applicant's interest has been, is, and will be adequately and ably represented by the District of Columbia.

The court went on to rule that the circumstances presented did not warrant a different result with respect to Super. Ct. Civ. R. 24(b) (permissive intervention).

The Board of Trade contends that the trial court erred in denying its aplication for leave to intervene as of right, because the interest represented by the District government was different from the interest it sought to represent. Appellant asserts that the interest represented by the District involved only the general governmental interest of defending a local legislative anactment, while the Board sought to represent the peculiar economic interests of its constituency. The Board argues that since neither of the parties below presented any evidence bearing on the economic impact of the existing law on local employers, nor developed the legislative history of the Longshoremen's Act to the extent the Board sought to, it should have been allowed to present these matters to the court's attention.

In reviewing the denial of a motion to intervene as of right, we will reverse only if we conclude that a timely applicant was entitled to intervene as of right. *Vale Proper-*

ties, Ltd. v. Canterbury Tales, Inc., supra, 431 A.2d at 14. In *Calvin-Humphrey v. District of Columbia,* D.C. App., 340 A.2d 795, 800 (1975), we stated that in cases in which the government is a party, the right to intervene on the side of the government should not be granted lightly, for "[i]n most cases we will presume that representation by such authorities is adequate, especially when the issue in controversy is one of policy vested in the discretion of the city government." The Board of Trade did not make the kind of showing necessary under *Calvin-Humphrey* to overcome the presumption that the District adequately was representing its interest. Appellant sought neither to assert a different claim or defense nor to obtain an outcome different from that sought by the District. We conclude that the Board of Trade and the District government sought to present the same claim, *i.e.,* the authority of the Council to legislate on workmen's compensation for the private employment sector, and that appellant's interest was represented adequately by the government.

The Board of Trade attempted to present evidence concerning the economic impact of the Longshoremen's Act on local employers, as well as some legislative materials, to justify the action taken by the Council with respect to the Workers' Compensation Act. There is no indication that such date would have had any impact upon the decision of the trial court. The authority of the local legislature to enact the Workers' Compensation Act is derived solely from the Self-Government Act, regardless of the Act's effect on annual premiums paid by employers for workmen's compensation insurance. Moreover, as to the additional legislative materials proffered by the Board of Trade, we note that in considering whether to grant its application to intervene, the trial court reviewed that material and nevertheless found nothing to change the position it already had taken in the case. The trial court

did not err in denying the Board of Trade's application for intervention as of right pursuant to Super. Ct. Civ. R. 24(a). Furthermore, given the facts and circumstances of this case, the court did not abuse its discretion in denying appellant permissive intervention under Super. Ct. Civ. R. 24(b).

Affirmed in part;
reversed in part.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 80-1311

DISTRICT OF COLUMBIA, APPELLANT,

v.

THE GREATER WASHINGTON CENTRAL LABOR COUNCIL, APPELLEE.

FOOD AND ALLIED SERVICE TRADES COUNCIL OF METROPOLITAN WASHINGTON, INTERVENOR.

No. 80-1312

THE GREATER WASHINGTON BOARD OF TRADE, APPELLANT,

v.

DISTRICT OF COLUMBIA, ET AL., APPELLEES.

Before: NEWMAN, *Chief Judge*; KELLY, KERN, NEBEKER, MACK, FERREN, PRYOR,* and BELSON, *Associate Judges*; and GALLAGHER,* *Associate Judge, Retired.*

Filed April 28, 1982

ORDER

On consideration of intervenor's petition for rehearing en banc and of the petition for rehearing and/or rehearing en banc filed by the Greater Washington Central Labor Council, it is

ORDERED for the merits division * that the petition for rehearing is denied. It appearing that there is an evenly divided vote among the judges in active service with this court, it is

FURTHER ORDERED that the petitions for rehearing en banc are denied.

PER CURIAM

Statement of *Associate Judge* BELSON, with whom *Associate Judges* KERN, NEBEKER, and FERREN join, concurring:

I favor rehearing en banc in this case. The plain fact is that the District of Columbia Workers' Compensation Act of 1979 [1] has effectively transferred a class of cases from the federal courts to the District of Columbia courts.[2]

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[1] D.C. Law 3-77, 27 D.C. Reg. 2503 (1980) (codified at D.C. Code 1981, §§ 36-301 *et seq.*).

[2] Prior to the enactment of the District of Columbia Workers' Compensation Act, workmen's compensation for the District of Columbia was governed by the Longshoremen's and Harbor Workers' Compensation Act. 33 U.S.C. §§ 901 *et seq.* (1976). D.C. Code 1973, § 36-501. The United States Secretary of Labor was responsible for administering the program. *Id.*, § 939. The United States Court of Appeals for the circuit in which the injury occurred had jurisdiction to review final orders of the Benefits Review Board. *Id.*, § 921(c). Jurisdiction to enforce the awards was vested in the United States District Court for the district in which the injury occurred. *Id.*, § 921(d). Under the new statutory scheme, that jurisdiction, to the extent it includes the review and enforcement of workman's compensation awards for private employees in the District of Columbia, has been transferred to the D.C. Court of Appeals and the Superior Court, respectively. D.C. Code 1981, §§ 36-322(b)(3), -322(c).

It may well be that most or all of the members of the court en banc would adopt the rationale and result of the division's carefully reasoned opinion confirming the power of the District of Columbia Council to adopt the disputed legislation. However, if this court is to render a decision which confirms the authority of the Council to transfer cases from the federal system to the District of Columbia system, I feel that it should be rendered by the court en banc rather than by a division.